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IN THE

Supreme Court of the United States

CHARLES B. MILLER, Superintendent,
Pendleton Correctional Facility, et al., *Petitioners*,

vs.

RICHARD A. FRENCH, et al., *Respondents*,

--- AND ---

UNITED STATES, *Petitioner*,

vs.

RICHARD A. FRENCH, et al., *Respondents*.

On Writs of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Does the Prison Litigation Reform Act's automatic stay provision, 18 U. S. C. § 3626(e)(2), violate the separation-of-powers doctrine?

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BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF PETITIONERS

INTEREST OF *AMICUS CURIAE*

The Criminal Justice Legal Foundation (CJLF)[1] is a non-profit California corporation organized to participate in litigation relating to the criminal justice system as it affects the public interest. CJLF seeks to bring the constitutional protections of the accused into balance with the rights of the victim and of society to rapid, efficient, and reliable determination of guilt and swift execution of punishment.

1. Rule 37.6 Statement: This brief was written entirely by counsel for *amicus*, as listed on the cover, and not by counsel for any party. No outside contributions were made to the preparation or submission of this brief.

   All parties have given written consent to the filing of this brief.

The automatic stay component of the Prison Litigation Reform Act is an important part of Congress's effort to limit excessive judicial intrusion in prison management. The cost of compliance with court orders in these cases threatens the ability of states to continue the tough sentencing policies that have dramatically reduced crime and saved many innocent persons in recent years. The Seventh Circuit's decision to strike down the automatic stay is thus contrary to the interests CJLF was formed to protect.

SUMMARY OF FACTS AND CASE

This case started over 20 years ago with prisoner-initiated, class action litigation over the conditions at what is now Pendleton Correctional Facility in Indiana. *French* v. *Duckworth*, 178 F. 3d 437, 438 (CA7 1999). The District Court found that the prison conditions violated both Indiana law and the United States Constitution. The remedy was a permanent injunction ordering "detailed changes" in prison conditions. *French* v. *Owens*, 777 F. 2d 1250, 1251 (CA7 1985). The Seventh Circuit affirmed much of the order. See *id.*, at 1258. The prison has been operating under this injunction ever since, subject to periodic modifications. 178 F. 3d, at 438.

The current round of litigation comes from Indiana's attempt to modify the injunction to conform to the new standards of the 1996 Prison Litigation Reform Act ("PLRA"). See 18 U. S. C. § 3626(a)(1). Under 18 U. S. C. § 3626(e)(2), the decree is automatically stayed if the District Court does not rule on the motion to modify within 30 days. Subdivision (e)(3) allows the court to postpone the automatic stay for up to 60 days "for good cause," other than a congested docket.

On June 5, 1997, Indiana filed a motion to terminate the decree. *French* v. *Duckworth*, *supra*, 178 F. 3d, at 440. On June 30, 1997, the prisoners responded with a motion asking the court to stay the automatic stay provision of § 3626(e)(2). *Id.*, at 440. The trial court granted the prisoners a Temporary Restraining Order ("TRO") on July 3, 1997, suspending the automatic stay provision. The court converted the TRO to a

preliminary injunction on July 11, 1997. Indiana appealed from that order.

The Seventh Circuit affirmed the preliminary injunction. The panel held that subdivision (e)(2)'s self-executing time limit was "an unconstitutional intrusion on the power of the courts to adjudicate cases." *Id.*, at 446. The Seventh Circuit further held that the automatic stay imposed a rule of decision on a pending case contrary to the holding of *United States* v. *Klein*, 80 U. S. (13 Wall.) 128 (1872). *French*, *supra*, 178 F. 3d, at 446-447.

The Seventh Circuit denied Indiana's motion for a rehearing en banc, with Judges Easterbrook, Posner, and Manion dissenting. See *id.*, at 448. On December 6, 1999, this Court granted Indiana's and the United States' certiorari petitions.

SUMMARY OF ARGUMENT

The PLRA's automatic stay provision cannot be construed to give courts the discretion to ignore it. Its language is unambiguous, and the automatic stay is constitutional as written. This Court should decline the United States' invitation to rewrite the statute.

The separation-of-powers doctrine does not hermetically seal the three branches from each other. This doctrine, although designed primarily to protect against the tyrannical aggregation of power by one branch, also promotes a capable and accountable government. The founders reconciled these interests by separating the powers through the Constitution's system of checks and balances. The Constitution does not seal off the three branches, but creates a duty of interdependence between them.

In the relationship between Congress and the Judiciary, Congress is the generalist, creating broad rules of general application, while the Judiciary is the particularist, applying the given rules to specific cases. This leaves Congress with considerable power over the operation of the courts. The rules of evidence and the federal harmless error rule are examples of

congressional authority over a court's decisionmaking. Because the automatic stay neither impermissibly interferes with the Judiciary's function of deciding cases, nor assumes that function, it does not violate the separation of powers.

The PLRA is Congress's attempt to check the excesses of the federal Judiciary in prison civil rights litigation. Too many courts have used their equitable powers to remake and manage prisons in these cases. Judicial authority has been involved in every aspect of running a prison system, from the type of cleaner to be used to clean the prison to the design and construction of entire prisons. Every state and the federal government have had at least some prisons or jails under judicial control. The comprehensive usurpation of prison management by federal district court judges is a direct assault against both federalism and the separation of powers.

The automatic stay is an important part of Congress's solution to this constitutional problem. Federalism and the separation of powers are continuously violated so long as prison systems operate under decrees that exceed the constitutional minimums. The automatic stay places the federal courts on a schedule in order to promptly relieve penal institutions from the burden of improper judicial interference with their operations. Nothing in the Constitution prevents this rule of procedure.

The automatic stay does not violate *United States* v. *Klein*. *Klein* is an unusual case that has since been limited. This case now applies only when Congress tells a court how to decide a pending case without changing the underlying law. The automatic stay does not come under this holding. Courts still retain the authority to decide cases. The statute involves the rights and duties of the parties pending the decision. Furthermore, Congress can and has changed the underlying law, making the present case even more removed from *Klein*.

The statute in the present case neither retroactively reopens a final judgment, nor effects a review of an Article III court. A long line of cases starting with *Pennsylvania* v. *Wheeling & Belmont Bridge Co.* have held that a court's exercise of its injunctive power does not create a final judgment. In *Wheeling Bridge*, Congress was allowed to effectively overturn one of

this Court's decisions because an injunction is a continuing decree and therefore subject to subsequent changes in the law. From a separation-of-powers perspective, the PLRA's automatic stay is comparatively minor compared to what Congress was allowed to do in *Wheeling Bridge*. Because Congress can effectively terminate a continuing injunction, it surely may suspend one pending a determination of whether it is legal under current law.

Placing a court on a schedule through the mechanism of an automatic stay is consistent with the separation of powers. The Seventh Circuit's holding would strike down many congressional limits on the Judiciary's administrative independence, including the bankruptcy law's automatic stay. Congress has often set priorities for courts to rule on cases. The only difference is that now Congress has set a specific time limit. This distinction has no constitutional significance.

ARGUMENT

I. The PLRA's unambiguous language should not be ignored to avoid a nonexistent constitutional problem.

The United States argues that in order to avoid rendering the Prison Litigation Reform Act's (PLRA) automatic stay provision unconstitutional, courts must have the discretion to enjoin it from operating automatically. See *French* v. *Duckworth*, 178 F. 3d 437, 442 (CA7 1999); *Hadix* v. *Johnson*, 144 F. 3d 925, 936-937 (CA6 1998), rev'd on other grounds, *Martin* v. *Hadix*, 527 U. S. __, 144 L. Ed. 2d 347, 119 S. Ct. 1998 (1999). This is an unacceptable use of a statutory canon in circumstances where it is unnecessary. The statutory language cannot support this proposed interpretation. Furthermore, this argument is unnecessary as the automatic stay provision is constitutional as it is written. See Part IV, *post*.

The discussion of any interpretation of the PLRA's automatic stay begins and ends with the statutory language of 18 U. S. C. § 3626(e)(2)-(3). See Appendix.

The provision's heart is in one word in its first sentence: "Any motion to modify or terminate prospective relief under subsection (b) *shall* operate as a stay during the period . . . ." § 3626(e)(2) (emphasis added). This mandatory language unambiguously states that the stay is automatic. The only discretion given to the court is whether to delay the stay for "not more than 60 days" after finding good cause. The narrowness of subdivision (e)(3)'s exception undermines any alternative reading. If "good cause" only justifies a 60-day extension, Congress could not have meant to allow the court to take the "normal equitable considerations," *French*, *supra*, 178 F. 3d, at 442, into account before exercising its discretion to issue a longer stay.

"Shall" means "shall." It does not mean maybe. Although it is acceptable to interpret statutes to avoid "serious constitutional problems," see *e.g*, *Edward J. DeBartolo Corp.* v. *Florida Gulf Coast Building & Constr. Trades Council*, 485 U. S. 568, 575 (1988), this is not a license to rewrite statutes. See *Commodity Futures Trading Comm'n* v. *Schor*, 478 U. S. 833, 841 (1986). The canon of avoiding unconstitutional construction will not extend " 'to the point of perverting the purpose of a statute' . . . or judicially rewriting it." *Aptheker* v. *Secretary of State*, 378 U. S. 500, 515 (1964) (quoting *Scales* v. *United States*, 367 U. S. 203, 211 (1961)). This canon has two requirements, a "serious likelihood that the statute will be held unconstitutional," and "the statute must be genuinely susceptible to two constructions . . . ." *Almendarez-Torres* v. *United States*, 523 U. S. 224, 238 (1998). The United States' argument fails on both grounds.

II. The separation-of-powers doctrine does not hermetically seal the three branches.

Before deciding whether the PLRA's automatic stay violates the doctrine of separation of powers, it is necessary to understand what this doctrine protects and why it does so. Fortunately, this Court and the founders have cleared a relatively straightforward path through the potentially confusing

thicket of the diverse interests and responsibilities of the three branches. Unfortunately, the Seventh Circuit strayed from this path, jumping into its discussion without a proper analysis of the rationale behind the separation-of-powers doctrine. Its opinion lacks the necessary understanding of the permissible interdependence among the three branches, sacrificing an act of Congress to an excessive protection of judicial prerogatives.

Congress, the Executive, and the Judiciary are separated primarily to protect against the threat to liberty posed by an excessive accumulation of power in one branch. Even before the Constitution's founding, separation of powers was a known bulwark against tyranny. See *Loving* v. *United States*, 517 U. S. 748, 756 (1996). The founders adopted this perspective. "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny." The Federalist No. 47, p. 301 (C. Rossiter ed. 1961) (J. Madison). This principle is found throughout this Court's separation-of-powers decisions. See, *e.g.*, *Loving*, 517 U. S., at 756; *Mistretta* v. *United States*, 488 U. S. 361, 380 (1989); *Morrison* v. *Olson*, 487 U. S. 654, 685-696 (1988); *INS* v. *Chadha*, 462 U. S. 919, 950-951 (1983); *id.*, at 960-961 (Powell, J., concurring); *Bowsher* v. *Synar*, 478 U. S. 714, 721-722 (1986); *Buckley* v. *Valeo*, 424 U. S. 1, 121 (1976); *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 635 (1952) (Jackson, J., concurring).

Separating the three branches does not only protect liberty; a lesser, but still important benefit is the enhanced operation of the government. "By allocating specific powers and responsibilities to a branch fitted to the task, the framers created a National Government that is both effective and accountable." *Loving*, *supra*, 517 U. S., at 757. By assigning each branch its own sphere of responsibilities, greater efficiency is achieved through the expertise that comes with experience. At the same time, the public knows which branch is responsible for any particular policy, ensuring accountability. See *id.*, at 757-758.

The Constitution's accommodation of liberty, effectiveness, and accountability is achieved through the means used to separate the three branches. It does not achieve these goals

through the absolute division of the three branches. "While the Constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity." *Youngstown*, *supra*, 343 U. S., at 635 (Jackson, J., concurring). A government that seals the three branches off from each other cannot function. As the framers understood, a "hermetic sealing off of the three branches of Government from one another would preclude the establishment of a Nation capable of governing itself effectively." *Buckley*, *supra*, 424 U. S., at 121. Therefore, any separation-of-powers analysis must take a "pragmatic, flexible view of differentiated governmental power . . . ." *Mistretta*, *supra*, 488 U. S., at 381.

The Constitution maintains a balance of power between three interdependent branches. Therefore, "the great security against a gradual concentration of the several powers in the same department consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others." The Federalist No. 51, pp. 321-322 (C. Rossiter ed. 1961) (J. Madison). Liberty, efficiency, and accountability are thus simultaneously advanced by a "carefully crafted system of checked and balanced power within each Branch." *Mistretta*, *supra*, 488 U. S., at 381; see also *Buckley*, *supra*, 424 U. S., at 122 (the framers "built into the tripartite Federal Government . . . a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other"); *Chadha*, *supra*, 462 U. S., at 951.

Instead of forbidding any intermixing of powers, separation of powers actually requires the branches to exert some power in the others' spheres of influence.

> "Separation of powers, [Madison] wrote, 'd[oes] not mean that these [three] departments ought to have no *partial agency* in, or no *controul* over the acts of each other,' but rather 'that where the *whole* power of one department is exercised by the same hands which possess the *whole* power of another department, the fundamental principles of a free constitution, are subverted.' " *Mistretta*, *supra*, 488 U. S., at 380-381 (quoting The Federalist No. 47, pp. 325-326 (J. Cooke ed. 1961) (J. Madison)) (emphasis in original; some brackets in original).

Therefore, "our constitutional system imposes upon the Branches a duty of overlapping responsibility, a duty of interdependence, as well as independence . . . ." *Id.*, at 381.

It is not enough to simply proclaim a separation-of-powers violation upon the mere finding that the act of one branch overlaps with the power of another. Instead, proper analysis looks to the nature and the extent of the alleged unconstitutional intrusion, looking to the respective powers, duties, and competencies of the respective branches. At the same time, the goals of the separation-of-powers doctrine, preserving liberty, while maintaining the government's effectiveness and accountability, must be kept in mind.

At an abstract level, separation of powers is violated in one of two ways. "One branch may interfere impermissibly with the other's performance of its constitutionally assigned function. Alternatively, the doctrine may be violated when one branch assumes a function that more properly is entrusted to the other." *Chadha*, *supra*, 462 U. S., at 963 (Powell, J., concurring) (citations omitted); see *Mistretta*, *supra*, 488 U. S., at 382.

Separation-of-powers analysis starts with the relative functions of the potentially conflicting branches. The spheres of influence of Congress and the Judiciary are explained in The Federalist. Congress has the authority to "prescrib[e] the rules by which the duties and rights of every citizen are to be regulated" while "[t]he interpretation of the laws is the proper and peculiar province of the courts." The Federalist No. 78, pp. 465-467 (C. Rossiter ed. 1961) (A. Hamilton); see *Plaut* v. *Spendthrift Farm, Inc.*, 514 U. S. 211, 222 (1995). In practice, Congress is the generalist, prescribing the general rules to regulate society and the legal system, while the courts are the particularists, applying these given rules to the specific cases. "It is the peculiar province of the legislature to prescribe general rules for the government of society; the application of those rules to individuals in society would seem to be the duty of other departments." *Fletcher* v. *Peck*, 10 U. S. (6 Cranch) 87,

136 (1810) (Marshall, C.J.); see *Plaut*, 514 U. S., at 241-242 (Breyer, J., concurring).

This still leaves Congress with considerable authority over the Judiciary. Congress has broad authority to enact procedural rules. See, *e.g.*, *Hanna* v. *Plumer*, 380 U. S. 460, 472 (1965); *Sibbach* v. *Wilson & Co.*, 312 U. S. 1, 9 (1941). Congressional authority extends very far into both what a court decides and how it reaches its decision. For example, this Court has invited Congress to formulate its own rules to replace its judicially created Fifth Amendment prophylactic, see *Miranda* v. *Arizona*, 384 U. S. 436, 467 (1966), and to provide it with a rule for defining harmless constitutional error. *Chapman* v. *California*, 386 U. S. 18, 21 (1967). So long as Congress does not "prescribe the rules of decision to the judicial Department of a case pending before it," *United States* v. *Klein*, 80 U. S. (13 Wall.) 128, 146 (1872), place review of an Article III court's decision in officials of another branch, or command the courts to retroactively reopen final judgments, it is not likely to unconstitutionally intrude upon the Judiciary. See *Plaut*, *supra*, 514 U. S., at 218.

A proper analysis of 18 U. S. C. § 3626(e)(2) takes these principles into account. *Amicus* submits that the PLRA's automatic stay is a rule that neither assumes a judicial function nor "interfere[s] impermissibly" with the Judiciary. See *Chadha*, *supra*, 462 U. S., at 963 (Powell, J., concurring). This rule does not decide any specific case, and it does not effect a review of an Article III court. It is no more than a mechanism to ensure the expeditious review of some of the longest and most invasive cases in American jurisprudence after Congress changed the law underlying the courts' power to issue injunctive relief in prison cases. Congress has only exerted the partial authority over the courts that is both its duty and its due. See The Federalist No. 47, pp. 302-303 (C. Rossiter ed. 1961) (J. Madison).

III. The PLRA's automatic stay provision is a procedural rule intended to check an excess of the Judiciary.

The Seventh Circuit's analysis of the automatic stay is 180 degrees off course. This provision advances both federalism and the separation of powers. Too many prisoner civil rights cases have degenerated into judicial micromanagement of penal institutions through continuing injunctions or consent decrees. These court orders give prisoners far more relief than the Constitution requires. The automatic stay therefore strikes a blow for the separation of powers and the equally important principle of federalism, by freeing federal and state prisons from the excesses of some Article III courts. Although the motive behind the policy is not relevant to the separation-of-powers issues, see *Plaut* v. *Spendthrift Farm, Inc.*, 514 U. S. 211, 228 (1995), a statute's effect is. Any analysis of the automatic stay must take into account the fact that it promotes these important constitutional policies by providing the necessary check on the courts. See Part II, *supra*.

A. The Problem.

The PLRA is Congress's response to one of the greatest sustained intrusions into federalism and the separation of powers by the federal Judiciary. Traditionally, courts did not interfere with the management of prisons. See J. DiIulio, No Escape 148 (1991) (cited below as "No Escape"). The balance of power between the federal courts and the prisons changed dramatically in the mid-60's and early 70's, as federal district courts entertained prisoner-initiated suits over prison conditions. See M. Feeley & E. Rubin, Judicial Policy Making and the Modern State 39-40 (1998); No Escape, *supra*, at 148. What began with a trickle soon became a torrent, with a "dramatic proliferation of prison decisions." Feeley & Rubin, *supra*, at 39. These cases typically involved courts refashioning prisons or jails after finding that the totality of the conditions violated the Constitution. See DiIulio, Enhancing Judicial Capacity, in Courts, Corrections, and the Constitution 4 (J. DiIulio ed. 1990).

The breadth of federal judicial involvement in the correctional system is startling. Forty-one states have had prisons

under comprehensive court orders. All 50 states have had jails under court orders and 10 states have had their entire prison systems under judicial interdiction. See Feeley & Rubin, *supra*, at 13 (footnotes omitted).

Not all district courts approach prison litigation in this manner. Some judges do not take an activist approach to prison litigation, keeping their rulings narrow, and often in the government's favor. See Cripe, Courts, Corrections, and the Constitution: A Practitioner's View, in Courts, Corrections, and the Constitution, *supra*, at 270-271. Unfortunately, too many district court judges were not so restrained. These courts would render decisions covering entire prisons or even prison systems. This level of intervention would often be justified by finding that the conditions of the prison as a whole was a "shock to the conscience" and thus violated the Eighth Amendment's prohibition of cruel and unusual punishment. See *id.*, at 271-272.

The level of judicial intervention in these cases is breathtaking, in both its extent and detail. A 52-page consent decree concerning the New York City jails signed by Mayor Ed Koch eventually "spawned more than 1,500 pages of court orders . . . ." M. Boot, Out of Order 138 (1998). The ensuing micromanagement is too typical.

> "For starters, the order guaranteed every inmate *free* access every day to newspapers, telephones, and television sets. But it went much further than that. The 'Sanitation Order' prescribed that certain areas of the jails must be cleaned with a particular type of detergent, Boraxo, in a specified strength (half a cup per gallon of water). New York faced fines if it didn't follow this order's 'floor care procedures'—for instance, if prison janitors failed to stay six inches away from baseboards and corners when applying the first two coats of floor finish." *Ibid.* (emphasis in original).

The case of *Guthrie* v. *Evans* shows how a suit from a handful of inmates can turn into a judicially-mandated transformation of a prison. What started as an *in forma pauperis* complaint by 51 black inmates in the Georgia State Prison at

Reidsville turned into one of the most detailed judicial interventions into the administration of a prison. Chilton & Talarico, Politics and Constitutional Interpretation in Prison Reform Litigation: The Case of *Guthrie* v. *Evans*, in Courts, Corrections, and the Constitution, *supra*, at 117. The "extensive changes . . . covered everything from racial discrimination to the right to retain up to six issues of monthly magazines for up to six months." *Ibid.* The litigation lasted from 1972 to 1985, involving over two hundred witnesses before a special master and "nonprocedural orders and consent decrees . . . too numerous to itemize." See *id.*, at 118-119. A special monitor was appointed to implement the numerous orders and decrees, and was given "broad powers beyond mere oversight of decree implementation and acted as fact-finder, mediator, manager, and planner." *Id.*, at 119. His fees exceeded the salary of Georgia's governor. The litigation was so long and so grueling that it drove personnel out of the prison, see *id.*, at 125, and caused the parties' positions to change as key personnel entered and left this seemingly endless case. See *id.*, at 124-125.

Judicial management of prisons is not limited to Eighth Amendment cases. A 1973 complaint filed by Arizona prisoners alleged that prison mail policies violated their First Amendment rights. This right was alleged to include the "constitutional right to subscribe to certain magazines, including *Playboy* and *Bachelor Beat* . . . ." *Hook* v. *State of Arizona*, 120 F. 3d 921, 923 (CA9 1997). In response, the state proposed a consent decree, accepted by the prisoners and the court, which promulgated comprehensive mail regulations, including a right for prisoners "to receive three twenty-five pound packages between December 10th and 31st of each year." *Ibid.* The Department of Corrections moved to modify the decree in October 1992. *Ibid.* After settlement negotiations broke down, Judge Carl A. Muecke denied the motion, while granting the prisoners' motion "to change the title of the list of people authorized to send holiday packages, and to permit inmates to possess and use hot pots in their cells to heat and cook items." *Ibid.*

Fortunately, the Ninth Circuit reversed in this case. It found that the considerable expense and security risk posed by the

nearly 25,000 packages a year justified modifying the order. See *id.*, at 924-925. Unsurprisingly, the court also found that the Constitution does not confer upon inmates a right to a hot pot in their cells. *Id.*, at 925. A concurring judge noted that Judge Muecke "entangled [himself] in the administration of the Arizona penal institutions," a role the District Court should "severely limit." *Id.*, at 927 (Beezer, J., concurring).

The Ninth Circuit has not always supervised Judge Muecke adequately. In *Casey* v. *Lewis*, 43 F. 3d 1261 (CA9 1991), the Ninth Circuit largely affirmed the bulk of Judge Muecke's detailed reordering of Arizona's prison library system in the name of protecting their right of access to the courts. See *id.*, at 1266. This

> "order specified in minute detail the times that libraries were to be kept open, the number of hours of library use to which each inmate was entitled (10 per week), the minimal educational requirements for prison librarians (a library science degree, law degree, or paralegal degree), the content of a videotaped legal-research course for inmates (to be prepared by persons appointed by the special master but funded by ADOC), and similar matters." *Lewis* v. *Casey*, 518 U. S. 343, 347 (1996).

This Court struck down the order because the prisoners had suffered no actual injury to their right of access. *Ibid.*

These are not isolated cases. "Rather, the prison cases constitute a rapid, inexorable procession of discrete decisions formulated by federal trial courts throughout the nation and affirmed repeatedly at the appellate level." Feeley & Rubin, *supra*, at 19. "The Constitution charges federal judges with deciding cases and controversies, not with running state prisons. Yet, too frequently federal district courts in the name of the Constitution effect wholesale takeovers of state correctional facilities and run them by judicial decree." *Lewis*, *supra*, 518 U. S., at 364 (Thomas, J., concurring). These cases often do not make it to the appellate level, as the prison authorities decline to appeal in exchange for concessions from the District Court. See, *e.g.*, Chilton & Talarico, *supra*, at 130 (describing purported negotiations between the Governor of Georgia and the District Court in the *Guthrie* case).

Consent decrees pose particular problems in prison litigation. Although the consent of the prison officials to the final order would seem to deflect criticism of judicial management of prisons, the consent is often not what it seems. Prison officials confronted with a hostile District Court, the threat of personal liability, and with an uncertain, expensive, and lengthy appeal as the only alternative, can find a consent decree the least bad option. See Decker, Consent Decrees and the Prison Litigation Reform Act of 1995: Usurping Judicial Power or Quelling Judicial Micro-Management, 1997 Wis. L. Rev. 1275, 1278. Furthermore, consent decrees are a wonderful aid to bureaucratic empire building. The new facilities, vast increases in funding, and more staff associated with comprehensive prison decrees can persuade prison officials to put up with the indignity of judicial micromanagement of their institutions. See Bleich, The Politics of Prison Crowding, 77 Cal. L. Rev. 1125, 1156-1158 (1989); Hagedorn, The Consequences of Federal District Court Intervention into Prisons and Jails: Philadelphia, Texas, and Arizona 34-35 (Brookings Institution 1995). Because "[p]rison litigation makes it easier for administrators to obtain additional funding," Bleich, 77 Cal. L. Rev., at 1157, any consent decree that substantially raises prison funding is suspect. Congress recognized the separation-of-powers implications of this interference with the state budgeting process and expressly gave legislators standing to challenge certain orders. See 18 U. S. C. § 3626(a)(3)(F).

A consequence of this immense expansion of federal judicial power is that many prisons and jails are now subject to detailed court orders that go beyond the scope of what the Constitution requires. There is no constitutional mandate for the type of cleaner to be used in cleaning the prison, see *supra*, at 12, or the size, location, and design of prisons. See *Ruiz* v. *Estelle*, 503 F. Supp. 1265, 1388-1389 (S.D. Tex. 1980).

> This is not judicial review, it is judicial management.
>
> "In the process of defining and imposing standards, courts undertook the management and micromanagement of these

institutions. The appointment of special masters, working full-time in the prisons and answerable directly to the court, was only the most dramatic manifestation of this general trend. Even when courts acted without appointing subordinate officials, they maintained an ongoing, detailed supervision of the institution that diverges from our traditional image of judicial action and judicial standard-setting." Feeley & Rubin, *supra*, at 18.

It is unacceptable, both as a matter of public policy and constitutional law, for courts to involve themselves so deeply in our penal institutions. Judges lack the training, resources, and perspective to manage prisons. While judges are generally quite capable of applying the law to resolve disputes between the parties, they are often poor managers. See Cripe, in Courts, Corrections, and the Constitution, *supra*, at 274. There are many examples of unintended, but disastrous consequences of the judicial management of prisons. Inflexible and improperly designed population caps in Philadelphia created an effective "get out of jail free card" for many of its criminals, devastating the city. See Hagedorn, *supra*, at 2-7. Because certain crimes could not be punished by imprisonment, these laws were unenforceable. Thus, drug dealers migrated to Philadelphia from other cities because " '[t]he town's wide open.' " *Id.*, at 6. Eventually, "there were instances where individuals were being arrested who had ten or more bench warrants and were saying things like 'You can't hold me, the caps on tonight.' " *Id.*, at 3.

The *Ruiz* litigation provides a particularly infamous and well-documented example of the dangers of judicial prison management. This case transformed a controversial, but safe and well-run system into an expensive nightmare for the inmates and staff. See DiIulio, The Old Regime and the *Ruiz* Revolution: The Impact of Judicial Intervention on Texas Prisons, in Courts, Corrections, and the Constitution, *supra*, at 53-53, 69-70; Hagedorn, *supra*, at 12-14. Courts do not have to actively mismanage prisons for their intervention to harm the institution. In *Ruiz*, the suit itself, and Judge Justice's reputation for sympathy to prisoner claims, led to a breakdown of discipline as inmates exploited the shift in the balance of power

between themselves and the administration. See *id.*, at 15. Litigation also intimidates guards, making them wary that disciplining inmates will lead to personal liability. See Engel & Rothman, The Paradox of Prison Reform: Rehabilitation, Prisoner's Rights, and Violence, 7 Harv. J.L. & Pub. Pol'y 413, 431 (1984). Continuing judicial management risks an endless degradation of the administration's authority.

This is an affront to both federalism and the separation of powers. "It is difficult to imagine an activity in which a state has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of its prisons." *Preiser* v. *Rodriguez*, 411 U. S. 475, 491-492 (1973). Judges should not make prison policy, but instead must defer to the prison administration's evaluation of penological objectives. See *O'Lone* v. *Estate of Shabazz*, 482 U. S. 342, 349-350 (1987). Courts, which lack both the knowledge and resources to administer prisons, are better suited to safeguarding basic principles; the details of prison life are better left to the executive and legislative branches. See *Procunier* v. *Martinez*, 416 U. S. 396, 404-405 (1974). Any remedy must therefore be narrowly tailored to what the Constitution minimally requires. A court "may not use the totality of all conditions to justify federal intervention requiring remedies more extensive than are required to correct Eighth Amendment violations." *Wright* v. *Rushen*, 642 F. 2d 1129, 1133 (CA9 1981). As two proponents of judicial intervention admit, "the prison reform cases . . . violated nearly every accepted principle for controlling the judicial branch." Feeley & Rubin, *supra*, at 18. The authors did not conclude that the courts were wrong, however, but rather that "there is something seriously wrong" with "federalism, separation of powers, and the rule of law . . . ." *Id.*, at 20.

This Court knows better, see Part II, *supra*, as does Congress. The PLRA is Congress's effort to correct the excesses of the federal courts in prison litigation. As Senator Abraham said during the debate over the PLRA, "judicial orders entered under federal law have effectively turned control of the prison system away from elected officials accountable to the taxpayer, and over to the courts." 141 Cong. Rec. 26,554 (1995). The PLRA

is Congress's exercise of its constitutional obligation to check another branch. The automatic stay provision is an important component of this policy and any analysis of its constitutionality must take this into account.

B. The Solution.

The PLRA seeks to restore the balance between the Judiciary, on one hand, and the States, Congress, and the Executive, on the other, by placing strict limits on the federal courts' power to issue injunctive relief in prison cases, and applying these limits to existing court orders. This later portion is particularly important since many prisons and jails are still operating under longstanding judicial decrees. See *supra*, at 14. The automatic stay is a necessary component for liberating the penal system from unnecessarily broad court orders.

If there is one constant in prison litigation, it is the length of the major cases. Any attempt to remake a prison system is going to take a long time. The *Ruiz* case started with a complaint filed in 1972, while the District Court's decision was not issued until 1980 after an "epic trial." *Ruiz* v. *Johnson*, 37 F. Supp. 2d 855, 860 (S.D. Tex. 1999). This Court has addressed a prison reform case that entailed similarly epic litigation, with numerous court orders and appeals snaking through the federal courts for over 20 years. See *Rufo* v. *Inmates of Suffolk County Jail*, 502 U. S. 367, 372-378 (1992).

Although it may take time for a court to reorder a prison, Congress has determined that the courts should not be dilatory in undoing any excesses. These cases are a source of continuing harm to the extent that the court orders exceed the constitutional minimum. Federalism and the separation of powers are continually violated, the administration's authority erodes, guards are deterred from disciplining inmates, and innovation is stifled so long as the system operates under the specter of continued judicial intervention. See *supra*, at 16-17. Until the court rules on the continued validity of the stay, justice delayed will be justice denied. Cf. *In re Blodgett*, 502 U. S. 236, 239 (1992) (delay in ruling on habeas petition in capital case causes "severe prejudice to the state").

Unfortunately, not all district courts can be expected to rule promptly on these motions. The judge ruling on the motion to modify under the PLRA will typically be the same judge who issued the order in the first place. Given the considerable time and effort that went into these orders, and the high stakes of the initial litigation, courts may be loath to undo their handiwork. While district judges are constitutional officers who can and should be expected to execute their legal duties, they are also human beings. The power and notoriety that comes with these cases may be difficult to give up. See Cripe, *supra*, at 270. Thus a judge may not wish to see his handiwork undone during his lifetime. See *Pasadena City Bd. of Education* v. *Spangler*, 427 U. S. 424, 433 (1976). A judge confronted with a motion to modify an order that goes well beyond the constitutional minimum has a strong personal incentive to delay ruling on the case, thereby keeping in force an order which is now illegal. 18 U. S. C. § 3626(e)(2) is Congress's device to prevent this from happening.

Without a specific directive from Congress, it is truly difficult to compel a federal court to rule on a case. A two-and-one-half-year stay of execution without any ruling was not enough to support a writ of mandamus in a habeas corpus attack on a capital conviction. See *Blodgett*, *supra*, 502 U. S., at 240. Although this Court's stern warning to the Ninth Circuit, see *id.*, at 240-241, was warranted, prison authorities should not have to face the prospect of two rounds of interlocutory appeals, or a long wait to get the expedited ruling they deserve. Since the law underlying these injunctions has changed, "it would be particularly inequitable" to make the taxpayers and prison authorities labor "under a continuing injunction" that is no longer valid while the district court "bide[s] [its] time . . . ." *Agostini* v. *Felton*, 521 U. S. 203, 240 (1997). The automatic stay places the federal courts on a schedule in order to restore federalism and the separation of powers. After 30 to 90 days, it restores the normal state of affairs, in which prisons are run by prison administrators and not special masters, until a court actually rules that the order is legal. Nothing in the Constitution prevents this rule of procedure.

IV. Congress has neither assumed a judicial function nor interfered impermissibly with the Judiciary's constitutionally assigned function.

There are two ways in which the separation-of-powers doctrine is violated—either by one branch assuming power that is "more appropriately diffused among separate branches" or by undermining another branch's "authority and independence . . . ." *Mistretta* v. *United States*, 488 U. S. 361, 382 (1989); see *INS* v. *Chadha*, 462 U. S. 919, 963 (1983) (Powell, J., concurring). This first prong is not relevant to the present case. Congress did not purport to decide any specific case when it passed the PLRA. A legislature assumes a judicial function when it actually operates as a court, such as the colonial legislatures which acted as "courts of equity of last resort, hearing original actions or providing appellate review of judicial judgments." *Plaut* v. *Spendthrift Farm, Inc.*, 514 U. S. 211, 219 (1995). The PLRA's automatic stay is merely a procedural rule, designed to keep courts and litigants on a tight schedule. See Part III B, *supra*. Although it can be delegated to the other branches, rulemaking is ultimately Congress's responsibility. See *Mistretta*, 488 U. S., at 386, n. 14.

The Seventh Circuit based its attack against the automatic stay provision on the statute's purported interference with the judicial function. It found that the time limit set by this rule was "an unconstitutional intrusion on the power of the courts to adjudicate cases." *French* v. *Duckworth*, 178 F. 3d 437, 446 (CA7 1999). The court further held that 18 U. S. C. § 3626(e)(2) was a rule of decision contrary to *United States* v. *Klein*, 80 U. S. (13 Wall.) 128 (1872). *French*, 178 F. 3d, at 446-447.

The PLRA's time limit does not unduly hinder a court from reaching any necessary decision. Contrary to the panel's reasoning, time limits on courts are neither rare nor unconstitutional. Since the automatic stay does not prevent a court from rendering its decision in any case, it does not violate the separation-of-powers doctrine.

A. No Rule of Decision.

Klein can be described as a corollary to the maxim "hard cases make bad law," see, *e.g.*, *Hudson* v. *United States*, 522 U. S. 93, 106 (1997) (Stevens, J., concurring), namely that "strange cases make strange law." The statute struck down in *Klein* is without a doubt "exceedingly odd." See Scheidegger, Habeas Corpus, Relitigation, and the Legislative Power, 98 Colum. L. Rev. 888, 922 (1998). *Klein* involved the seizure and sale of cotton from Wilson, a Confederate supporter during the Civil War. Wilson had qualified for a blanket pardon issued by President Lincoln to all rebel supporters who swore an oath of loyalty to the Union. *Klein*, *supra*, 80 U. S., at 131-132. In an earlier decision, this Court had held that those who qualified for the pardon were entitled to reimbursement for any property seized during the war. *United States* v. *Padelford*, 76 U. S. (9 Wall.) 531 (1870). The Court of Claims ruled that in light of Wilson's pardon, his estate was entitled to the proceeds of the sale. See *Klein*, 80 U. S., at 132.

The statute was Congress's attempt to overrule *Padelford*. See Young, Congressional Regulation of Federal Courts' Jurisdiction and Processes: *United States* v. *Klein* Revisited, 1981 Wis. L. Rev. 1189, 1206-1209. The statute required this Court to remand any cases like Wilson's to the Court of Claims, to treat the pardon as conclusive evidence of disloyalty, and to dismiss the appeals of those seeking to recover the property of these persons. See *Klein*, *supra*, 80 U. S., at 130-134.

This statute's unconstitutionality is clear. This law was meant to overturn one part of President Lincoln's pardon. "Its great and controlling purpose is to deny to pardons granted by the President the effect which this Court has adjudged them to have." *Id.*, at 145. Congress cannot limit the pardon as it is the exclusive province of the Executive. See *id.*, at 148; see also R. Fallon, D. Meltzer, & D. Shapiro, Hart & Wechsler's The Federal Courts and the Federal System 369, n. 22 (4th ed. 1996) (viewing *Klein* as based on an "invasion of executive power"). This intrusion upon the Executive thus violated the separation of powers.

The *Klein* Court's holding that the act also violated the Judiciary's constitutional prerogatives is more complex. This Court determined that the statute's use of Congress's power to set jurisdiction was a cover for telling the courts how to rule in these cases. See *Klein*, *supra*, 80 U. S., at 146. It next concluded that it "prescribe[d] rules of decision to the judicial department in cases pending before it" and therefore violated the separation of powers. See *ibid.*

This holding is no longer entirely valid. "Whatever the precise scope of *Klein*, however, later decisions have made clear that its prohibition does not hold when Congress 'amend[s] applicable law.' " *Plaut*, *supra*, 514 U. S., at 218 (quoting *Robertson* v. *Seattle Audubon Soc.*, 503 U. S. 429, 441 (1992)). *Plaut*'s implicit question about *Klein*'s scope deserves an answer. The best answer is that this part of *Klein* is very narrow, and unlikely to be repeated.

There is nothing inherently improper about Congress giving the courts a "rule of decision." In the broadest sense, Congress tells the courts how to decide cases each time it enacts a substantive rule of law. Enacting such rules is the very heart of the legislative power. See Scheidegger, *supra*, 98 Colum. L. Rev., at 909-911. Congress's power to enact procedural rules also gives this branch considerable influence over how courts exercise their power. The Rules of Evidence, subject to other constitutional limitations such as the Confrontation Clause, instructs the courts on what evidence they can and cannot admit. See, *e.g.*, Fed. R. Evid. 402 ("All relevant evidence is admissible except as otherwise provided by the Constitution of the United States, by Act of Congress, by these rules, or by other rules prescribed by the Supreme Court pursuant to statutory authority"). The federal reversible error rule, enacted by Congress to combat what it saw as the tendency of the federal appellate courts to be "citadels of technicality," is another example of Congress instructing the courts on how to decide cases. See *Kotteakos* v. *United States*, 328 U. S. 750, 759 (1946); 28 U. S. C. § 2111.

The *Klein* Court did not proscribe all rules of decision, but only those affecting pending cases. See *Klein*, *supra*, 80 U. S., at 146. As noted above, *Klein*'s retroactivity rule is no longer

all it seems. In *Robertson* v. *Seattle Audubon Soc.*, 503 U. S. 429 (1992), this Court confronted an act of Congress which stated that a particular plan for wildlife and forest management "is adequate consideration for the purpose of meeting the statutory requirements" that were the basis for a named pending case. *Id.*, at 430-431. This Court held this act constitutional, even though it effectively decided a pending case, because Congress changed the applicable law. *Id.*, at 441.

Klein's rule is limited to legislation that does not change the relevant law, but merely dictates the outcome of a pending case under the unchanged law. In *Klein*, Congress could not change the applicable law, the President's pardon power. Because the law could not be changed, the legislation was no more than an attempt to mandate a result in the case, unconstitutionally infringing upon the Judiciary's power to apply the given law to a particular case. See, *e.g.*, *Fletcher* v. *Peck*, 10 U. S. (6 Cranch) 87, 136 (1810); *supra*, at 9-10.

The automatic stay provision does not tell the court how to decide the specific case before it. This rule changes the applicable law regarding the extent of injunctive relief. A host of decrees were issued at a time when the standard was different. Many, if not most, of those decrees are now illegal. A party should not have to continue to obey an order which is now illegal. The statute gives the issuing court a reasonable opportunity, up to 90 days, to confirm that the order is legal under present law. After that, it relieves the enjoined party from obedience to a probably illegal order unless and until a court determines it is legal.

The court retains full discretion over the final disposition of the case, see *Hadix* v. *Johnson*, 144 F. 3d 925, 940 (CA6 1998), rev'd in part on other grounds, *Martin* v. *Hadix*, 527 U. S. __, 144 L. Ed. 2d 347, 119 S. Ct. 1998 (1999); *Gavin* v. *Branstad*, 122 F. 3d 1081, 1089 (CA8 1997) ("The PLRA leaves the judging to the judges and therefore does not violate the *Klein* decision"). Since the court is not kept from giving "the effect to evidence, which in its own judgment, such evidence should have," *Klein*, *supra*, 80 U. S., at 147, the automatic stay does not violate *Klein*. Under the automatic stay, judges still have an "adjudicatory function to perform," *United States* v.

Sioux Nation of Indians, 448 U. S. 371, 392 (1980), deciding whether the decree comports with the PLRA's new requirements. While they can still rule, excessive delay in doing so results in temporary relief for the state. This is constitutional.

B. Law and Retroactivity.

Klein is not the only limit on congressional regulation of how the federal courts exercise their Article III power. In *Plaut*, *supra*, this Court identified three types of legislation that violate this aspect of the separation-of-powers doctrine: the legislation in *Klein*, vesting review of Article III courts in the Executive Branch, and the retroactive reopening of final judgments. See 514 U. S., at 218-219.

Commanding the courts to retroactively open final judgments violates the separation of powers by undermining a court's authority to decide cases. Finality is an essential part of the authority to decide cases "because 'a judicial Power' is one to render dispositive judgments." *Id.*, at 219 (quoting Easterbrook, Presidential Review, 40 Case W. Res. L. Rev. 905, 926 (1990)). Because neither § 3626(e)(2) nor the PLRA reopens a final judgment, *Plaut* is not violated.

The automatic stay implements the modification of injunctions and consent decrees in prisoner civil rights cases. Unlike the litigation reopened by Congress in *Plaut*, these judgments are never truly final. *Plaut* dealt with securities fraud suits that had been dismissed as untimely under the statute of limitations. *Plaut*, *supra*, 514 U. S., at 213-214. Congress attempted to reopen these cases by retroactively extending the statute of limitations for this class of litigants. See *id.*, at 214-215. The *Plaut* Court struck this down as violating the Judiciary's power to decide cases. *Id.*, at 218-219.

Plaut must be distinguished from the cases starting with *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 59 U. S. (18 How.) 421 (1856), which have consistently held that a court's exercise of its injunctive power does not create a final judgment in this sense. In *Wheeling Bridge*, a prior decision of this Court had held that a bridge erected across the Ohio River by defendant obstructed the free navigation of the river, and accordingly ordered its removal or the obstruction's abatement. See *id.*, at

425. According to this prior decision, the obstruction violated federal statutes. See *id.*, at 430. After this decision, Congress enacted a law that this bridge was legal and that the company could maintain it at its present height. *Id.*, at 425. *Wheeling Bridge* confronted the constitutionality of this act.

The Court initially noted that Congress cannot "annul the judgment of the court already rendered, or the rights determined thereby in favor of the plaintiff." *Id.*, at 431. Yet this case was distinguishable from this proposition, see *ibid.*, due to the nature of the remedy imposed to protect the right adjudicated in the prior case.

The right to navigate the river was a "public right" that could support a private action for damages by a private party sustaining special damages from the obstruction. *Ibid.* The private party could also "file a bill in chancery for the purpose of removing the obstruction." *Ibid.* Because the right was "public" it was subject to the regulation of Congress. *Ibid.* A remedy of damages, being a final judgment, was beyond the power of Congress to legislate retroactively. *Ibid.* An equitable remedy, such as the abatement before the Court, was a different matter.

> "But that part of the decree, directing the abatement of the obstruction, is executory, a *continuing decree*, which requires not only the removal of the bridge, but enjoins the defendants against any reconstruction or continuance. Now, whether it is a *future existing or continuing* obstruction depends upon the question whether or not it interferes with the right of navigation. If, in the meantime, since the decree, this right has been modified by the competent authority, so that the bridge is no longer an unlawful obstruction, it is quite plain the decree of the court cannot be enforced. There is no longer any interference with the enjoyment of the public right inconsistent with law, no more than there would be where the plaintiff himself had consented to it, after the rendition of the decree." *Id.*, at 431-432 (emphasis added).

So long as an injunction is in force, it is subject to modification even if it is a final decree. See *Pasadena City Bd. of*

Education v. *Spangler*, 427 U. S. 424, 437 (1976). "A continuing decree of injunction directed to events to come is subject always to adaption as events may shape the need." *United States* v. *Swift & Co.*, 286 U. S. 106, 114 (1932). The injunction may be continuously modified because the court's jurisdiction over the injunction does not end unless the injunction is terminated. "The source of the power to modify is of course the fact that the injunction often requires continuing supervision by the court and always a continuing willingness to apply its powers and processes on behalf of the party who obtained that equitable relief." *System Federation* v. *Wright*, 364 U. S. 642, 647 (1961). When the law or circumstances significantly change, the injunction must change with them. See *Agostini* v. *Felton*, 521 U. S. 203, 215 (1997); *Rufo* v. *Inmates of Suffolk County Jail*, 502 U. S. 367, 384 (1992). Indeed, courts have a duty to modify injunctions once the law has changed sufficiently. See *Agostini*, 521 U. S., at 240. *Wheeling Bridge* establishes the principle that Congress can change the circumstances, and thus the entitlement to injunctive relief, without violating the separation of powers, even if the injunction is "final."

Although it has the most relevance to the constitutionality of the PLRA's retroactive changing of the standards governing prison injunctions, *Wheeling Bridge* also supports the automatic stay provision. Since Congress was able to effectively overrule one of this Court's decisions in *Wheeling Bridge*, it can enact the much lesser intrusion of its temporary stay mechanism. If Congress did not unconstitutionally review this Court's decision in the first *Wheeling Bridge* case, then the PLRA's automatic stay similarly does not review any federal court ruling. Since the injunction in the present case is not final for the purpose of the separation of powers, Congress may provide for its temporary suspension in the context of the changed circumstances of the PLRA. The Seventh Circuit's holding that the automatic stay unconstitutionally reviews court decisions, see *French* v. *Duckworth*, 178 F. 3d 437, 446 (CA7 1999) is simply incorrect.

It is true that the present case is not identical to *Wheeling Bridge*. Unlike that case, Congress does not have total control

over the right underlying the remedy. Whatever the Constitution requires at minimum Congress cannot limit.[2] This does not change the analysis, however, because the automatic stay involved does not overturn any prior injunction. Although it may suspend the operation of the injunction if the District Court does not rule on its continued validity sufficiently quickly, ultimately those portions of the injunction that satisfy the constitutional minimums will be reinstated. Furthermore, many if not most prison injunctions go well beyond the constitutional minimum. See *supra*, at 14. If Congress can completely overturn a decision under *Wheeling Bridge*, then the automatic stay may relieve prison systems from the burden of excessive injunctions until the court decides whether and to what extent the injunction is actually within the legal limit.

This view of *Wheeling Bridge* is consistent with this Court's interpretations of the decision. Some commentators have distinguished *Wheeling Bridge* from the PLRA, because prison civil rights litigation does not rely on the public rights mentioned in that case. See, *e.g.*, Decker, Consent Decrees and the Prison Litigation Reform Act of 1995: Usurping Judicial Power or Quelling Judicial Micro-Management, 1997 Wis. L. Rev. 1275, 1290. This misreads the term and its context. In *Wheeling Bridge* the "public rights" was used in its "discussion[] of the law of nuisance" in which "the Court merely expressed agreement with the proposition that a court of equity could enjoin a public nuisance in a case brought by a private person who sustained specific injury." *California* v. *Sierra Club*, 451 U. S. 287, 296, n. 7 (1981). In the context of the separation-of-powers analysis, the fact that the injunction was against a public nuisance was irrelevant. What matters was that the injunction was necessarily "a continuing decree," *Wheeling Bridge*, *supra*, 59 U. S., at 431, and therefore subject to modification when Congress changed the legal circum-

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2. And in fact, Congress has not limited injunctive relief below the constitutionally required minimums. See 18 U. S. C. § 3626(a)(1). Congress can eliminate federal equity power in an entire area, relegating aggrieved parties to state remedies, see, *e.g.*, 28 U. S. C. § 1341 (Tax Injunction Act), but it has not done so here.

stances. Even between private parties, an injunction is a "continuing decree" that is always subject to adaptation due to changes in the facts or the law. See *System Federation*, *supra*, 364 U. S., at 647. The character of the right is irrelevant for the separation-of-powers analysis. The issue here is not the validity or even the source of the legal rule that produced the Article III judgments, but rather the immunity from legislative abrogation of those judgments themselves. *Plaut*, *supra*, 514 U. S., at 239. Because Congress can effectively abrogate a continuing injunction, it may temporarily suspend one that goes beyond the constitutional minimum.

C. Schedules and Judicial Power.

The Seventh Circuit also found that the automatic stay unconstitutionally interfered with the court's ability to decide cases by impermissibly placing power over the status quo of the litigation in the hands of the party moving to terminate the decree. *French*, *supra*, 178 F. 3d, at 444. Congress can and does place courts under automatic rules. It also has the authority to set strict deadlines to the pace of the litigation. The Seventh Circuit's decision to strike down Congress's schedule betrays a misplaced sense of constitutional priorities.

Judge Easterbrook's dissent lists the many ways in which Congress limits the Judiciary's administrative independence, and would thus run afoul of the Seventh Circuit's holding. See *id.*, at 451-452 (Easterbrook, J., dissenting). The dissent correctly notes that § 3626(e)(2) is no different from these valid exercises of congressional power. As the dissent notes, the Seventh Circuit operates in a constitutional vacuum. "I am not aware of any decision by the Supreme Court holding, or even suggesting, that statutes requiring judges to adjudicate with dispatch pose constitutional problems." *Id.*, at 450.

Amicus will add only a few points to Judge Easterbrook's dissent. The Seventh Circuit distinguishes the automatic stay in bankruptcy law, 11 U. S. C. § 362, because that statute preserves "the court's equitable powers over the entirety of the bankruptcy estate, not superseding or undermining them." *French*, *supra*, 178 F. 3d, at 443. While the stay may preserve the status quo of the case before the bankruptcy court, it

severely disrupts the powers of other courts over the cases before them. Thus a civil plaintiff could not execute against the surety on a supersedeas bond when automatically stayed by the bankruptcy filing. See *Celotex Corp.* v. *Edwards*, 514 U. S. 300, 301 (1995). The filing in the *Celotex* case stayed over 141,000 suits, 100 appeals, and $70 million in supersedeas bonds. See *id.*, at 302, n. 2. This massive interference with the proceedings of other courts is triggered by a party filing a petition without a judicial decision. See 11 U. S. C. § 362(a).

There is nothing unconstitutional about Congress giving the courts a set of standards they must follow. Section 3626(e)(2) sets a deadline. Deadlines require hard and fast limits. "But '[d]eadlines are inherently arbitrary' while fixed dates 'are often essential to accomplish necessary results.' " *United States* v. *Locke*, 471 U. S. 84, 94 (1985) (quoting *United States* v. *Boyle*, 469 U. S. 241, 249 (1984)). For every deadline there is always someone who must be a day late, but courts cannot ignore the mandate of Congress's deadline in order to obtain " 'optimal' policy results." *Carlisle* v. *United States*, 517 U. S. 416, 430 (1996). The federal courts cannot use their inherent rulemaking power to overcome a specific rule of procedure. See *id.*, at 426. The fact that a congressional rule leads to a seemingly harsh result is irrelevant. The courts must follow Congress's command. *Locke*, 471 U. S., at 101.

Congress has often set priorities for courts to rule on cases by informing the Judiciary to rule quickly or grant expedited review in various classes of cases. See, *e.g.*, *United States* v. *Eichman*, 496 U. S. 310, 313, n. 2 (1990) (expedited review for federal flag burning statute under 18 U. S. C. § 700(d)(2)); *United States* v. *Salerno*, 481 U. S. 739, 742-743 (1987) (expedited review for pretrial detention orders under the Bail Reform Act, 18 U. S. C. § 3141(b)(c)); *Federal Election Comm'n* v. *National Conservative Political Action Comm.*, 470 U. S. 480, 487-488 (1985) (expedited review of constitutional attacks on the Federal Election Commission Act under 28 U. S. C. § 437(h)(a)); *NAACP* v. *New York*, 413 U. S. 345, 354 (1973) (under 42 U. S. C. § 1971(g), when the Attorney General sues to enforce the Voting Rights Act of 1965, the United States may request a three-judge court which must " 'cause the case to

be in every way expedited' "). This Court has never questioned Congress's authority to order the Judiciary's priorities in deciding litigation. It is the Legislative Branch's prerogative to define a category of cases as too important for the courts to ignore or delay. See *Heckler* v. *Edwards*, 465 U. S. 870, 881 (1984). The only difference between the automatic stay and the many expedited review statutes upheld by this Court, is that § 3626(e)(2) contains a specific deadline. This distinction has no constitutional significance.

The automatic stay does not mandate the result in any specific case. It merely requires the court to act expeditiously or effectively grant temporary relief to the party injured by the delay. One may disagree with the place Congress struck the balance between the states' and prisoners' interests, but that is Congress's prerogative, to order priorities in federal litigation. Most importantly, it is Congress's *duty* to check the excesses of the federal Judiciary, by relieving prisons from excessive court orders.

CONCLUSION

The decision of the Seventh Circuit should be reversed.

February, 2000

Respectfully submitted,

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APPENDIX A

Sec. 3626. Appropriate remedies with respect to prison conditions

"(a) Requirements for Relief.—

"(1) Prospective relief.—(A) Prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief.

"(B) The court shall not order any prospective relief that requires or permits a government official to exceed his or her authority under State or local law or otherwise violates State or local law, unless—

"(i) Federal law permits such relief to be ordered in violation of State or local law;

"(ii) the relief is necessary to correct the violation of a Federal right; and

"(iii) no other relief will correct the violation of the Federal right.

"(C) Nothing in this section shall be construed to authorize the courts, in exercising their remedial powers, to order the construction of prisons or the raising of taxes, or to repeal or detract from otherwise applicable limitations on the remedial powers of the courts.

"(2) Preliminary injunctive relief.—In any civil action with respect to prison conditions, to the extent otherwise authorized by law, the court may enter a temporary restraining order or an order for preliminary injunctive relief. Preliminary injunctive relief must be narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm. The court shall give substantial weight to any adverse impact on

public safety or the operation of a criminal justice system caused by the preliminary relief and shall respect the principles of comity set out in paragraph (1)(B) in tailoring any preliminary relief. Preliminary injunctive relief shall automatically expire on the date that is 90 days after its entry, unless the court makes the findings required under subsection (a)(1) for the entry of prospective relief and makes the order final before the expiration of the 90-day period.

"(3) Prisoner release order.—(A) In any civil action with respect to prison conditions, no prisoner release order shall be entered unless—

"(i) a court has previously entered an order for less intrusive relief that has failed to remedy the deprivation of the Federal right sought to be remedied through the prisoner release order; and

"(ii) the defendant has had a reasonable amount of time to comply with the previous court orders.

"(B) In any civil action in Federal court with respect to prison conditions, a prisoner release order shall be entered only by a three-judge court in accordance with section 2284 of title 28, if the requirements of subparagraph (E) have been met.

"(C) A party seeking a prisoner release order in Federal court shall file with any request for such relief, a request for a three-judge court and materials sufficient to demonstrate that the requirements of subparagraph (A) have been met.

"(D) If the requirements under subparagraph (A) have been met, a Federal judge before whom a civil action with respect to prison conditions is pending who believes that a prison release order should be considered may sua sponte request the convening of a three-judge court to determine whether a prisoner release order should be entered.

"(E) The three-judge court shall enter a prisoner release order only if the court finds by clear and convincing evidence that—

"(i) crowding is the primary cause of the violation of a Federal right; and

"(ii) no other relief will remedy the violation of the Federal right.

"(F) Any State or local official or unit of government whose jurisdiction or function includes the appropriation of funds for the construction, operation, or maintenance of program facilities, or the prosecution or custody of persons who may be released from, or not admitted to, a prison as a result of a prisoner release order shall have standing to oppose the imposition or continuation in effect of such relief and to seek termination of such relief, and shall have the right to intervene in any proceeding relating to such relief.

"(b) Termination of Relief.—

"(1) Termination of prospective relief.—(A) In any civil action with respect to prison conditions in which prospective relief is ordered, such relief shall be terminable upon the motion of any party or intervener—

"(i) 2 years after the date the court granted or approved the prospective relief;

"(ii) 1 year after the date the court has entered an order denying termination of prospective relief under this paragraph; or

"(iii) in the case of an order issued on or before the date of enactment of the Prison Litigation Reform Act, 2 years after such date of enactment.

"(B) Nothing in this section shall prevent the parties from agreeing to terminate or modify relief before the relief is terminated under subparagraph (A).

"(2) Immediate termination of prospective relief.—In any civil action with respect to prison conditions, a defendant or intervener shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.

"(3) Limitation.—Prospective relief shall not terminate if the court makes written findings based on the record that prospective relief remains necessary to correct a current or ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation.

"(4) Termination or modification of relief.—Nothing in this section shall prevent any party or intervener from seeking modification or termination before the relief is terminable under paragraph (1) or (2), to the extent that modification or termination would otherwise be legally permissible.

"(c) Settlements.—

"(1) Consent decrees.—In any civil action with respect to prison conditions, the court shall not enter or approve a consent decree unless it complies with the limitations on relief set forth in subsection (a).

"(2) Private settlement agreements.—(A) Nothing in this section shall preclude parties from entering into a private settlement agreement that does not comply with the limitations on relief set forth in subsection (a), if the terms of that agreement are not subject to court enforcement other than the reinstatement of the civil proceeding that the agreement settled.

"(B) Nothing in this section shall preclude any party claiming that a private settlement agreement has been breached from seeking in State court any remedy available under State law.

"(d) State Law Remedies.—The limitations on remedies in this section shall not apply to relief entered by a State court based solely upon claims arising under State law.

"(e) Procedure for Motions Affecting Prospective Relief.—

"(1) Generally.—The court shall promptly rule on any motion to modify or terminate prospective relief in a civil action with respect to prison conditions.

"(2) Automatic stay.—Any prospective relief subject to a pending motion shall be automatically stayed during the period—

"(A)(i) beginning on the 30th day after such motion is filed, in the case of a motion made under paragraph (1) or (2) of subsection (b); or

"(ii) beginning on the 180th day after such motion is filed, in the case of a motion made under any other law; and

"(B) ending on the date the court enters a final order ruling on the motion.

"(f) Special Masters.—

"(1) In general.—(A) In any civil action in a Federal court with respect to prison conditions, the court may appoint a special master who shall be disinterested and objective and who will give due regard to the public safety, to conduct hearings on the record and prepare proposed findings of fact.

"(B) The court shall appoint a special master under this subsection during the remedial phase of the action only upon a finding that the remedial phase will be sufficiently complex to warrant the appointment.

"(2) Appointment.—(A) If the court determines that the appointment of a special master is necessary, the court shall request that the defendant institution and the plaintiff each submit a list of not more than 5 persons to serve as a special master.

"(B) Each party shall have the opportunity to remove up to 3 persons from the opposing party's list.

"(C) The court shall select the master from the persons remaining on the list after the operation of subparagraph (B).

"(3) Interlocutory appeal.—Any party shall have the right to an interlocutory appeal of the judge's selection of the special master under this subsection, on the ground of partiality.

"(4) Compensation.—The compensation to be allowed to a special master under this section shall be based on an hourly rate not greater than the hourly rate established under section 3006A for payment of court-appointed counsel, plus costs reasonably incurred by the special master. Such compensation and costs shall be paid with funds appropriated to the Judiciary.

"(5) Regular review of appointment.—In any civil action with respect to prison conditions in which a special master is appointed under this subsection, the court shall review the appointment of the special master every 6 months to determine whether the services of the special master continue to be required under paragraph (1). In no event shall the appointment of a special master extend beyond the termination of the relief.

"(6) Limitations on powers and duties.—A special master appointed under this subsection—

"(A) may be authorized by a court to conduct hearings and prepare proposed findings of fact, which shall be made on the record;

"(B) shall not make any findings or communications ex parte;

"(C) may be authorized by a court to assist in the development of remedial plans; and

"(D) may be removed at any time, but shall be relieved of the appointment upon the termination of relief.

"(g) Definitions.—As used in this section—

"(1) the term 'consent decree' means any relief entered by the court that is based in whole or in part upon the consent or acquiescence of the parties but does not include private settlements;

"(2) the term 'civil action with respect to prison conditions' means any civil proceeding arising under Federal law with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison, but does not include habeas corpus

proceedings challenging the fact or duration of confinement in prison;

"(3) the term 'prisoner' means any person subject to incarceration, detention, or admission to any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program;

"(4) the term 'prisoner release order' includes any order, including a temporary restraining order or preliminary injunctive relief, that has the purpose or effect of reducing or limiting the prison population, or that directs the release from or nonadmission of prisoners to a prison;

"(5) the term 'prison' means any Federal, State, or local facility that incarcerates or detains juveniles or adults accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law;

"(6) the term 'private settlement agreement' means an agreement entered into among the parties that is not subject to judicial enforcement other than the reinstatement of the civil proceeding that the agreement settled;

"(7) the term 'prospective relief' means all relief other than compensatory monetary damages;

"(8) the term 'special master' means any person appointed by a Federal court pursuant to Rule 53 of the Federal Rules of Civil Procedure or pursuant to any inherent power of the court to exercise the powers of a master, regardless of the title or description given by the court; and

"(9) the term 'relief' means all relief in any form that may be granted or approved by the court, and includes consent decrees but does not include private settlement agreements."